the same deed. Co. Litt. 352–6; Com. Dig. *Estoppel, E.* 2. The language of the deed is this: "meaning hereby to convey the same premises which was conveyed to us by Ransom Clark, by his mortgage deed, dated July 11th, 1835, and recorded in Penobscot's Registry, vol. 71, p. 142 "

If the tenant is estopped by the recital, what is that recital? Is it anything more than that the title of the husband was that of mortgagee? There is no averment that the mortgage had been foreclosed; and the admission cannot be carried beyond what is affirmed "with certainty and particularity." The title and seisin named in the deed is not such as gives a right of dower, being only the title of a mortgagee. The tenant's grantor *accepted* only such an estate as is described in terms in the deed, and in any event an estoppel cannot arise by the assumption of the existence of any fact not clearly and distinctly stated in the deed. On the deed itself, therefore, no estoppel arises in this case.

If the tenant may be allowed to prove the nature and extent of the seisin of the husband, and to show that it was not a dowable seisin (as we think he may), the facts agreed upon show that the husband never had any other title or interest in the premises than that of a mortgagee, who had entered for foreclosure, but had not perfected it. The deed from the husband was delivered before the expiration of the three years after entry to foreclose. This deed, upon inspection, appears to be a quit claim, and not a warrantee deed, as stated in the report of the case. It is well established law that the wife of a mortgagee cannot claim dower in an estate, until the same is foreclosed by the husband. 4 Kent's Com. 43; 4 Dane Abr. 671; Washburn on R. Actions, ch. 7, § 15.

The husband in this case was never so seised as to give his wife a right to dower in the premises.

Plaintiff, nonsuit.

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[*Same Term.*]

JULIA A. FOSTER *vs.* SYLVESTER GORDON.

This case, in most of its facts, resembled the foregoing case, *vs.* Dwinel. The only seisin and right that the husband had was

derived from a levy of an execution in his favor on his debtors' property. The husband gave a deed, of quit claim, under which tenant claims, before the expiration of the year allowed for redemption to the debtors. It was decided that the husband had no seisin that gave his wife a right of dower in the land levied on.

*Granger*, for plaintiff.

*Briggs*, for defendant.

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We are indebted to the courtesy of Mr. Justice KENT for the foregoing very able and satisfactory exposition of the law of estoppels by deed, as applicable to the subject of dower, and how far the rights of the grantee of the husband are liable to be affected by the acceptance of the deed of the husband.

1. There is no rule of law better established than that estoppels, to be binding, must be mutually so upon both parties. 3 Thomas Coke 342; Co. Litt. 352, b. "Every estoppel ought to be reciprocal, that is, to bind both parties." This extends to privies in blood, and in estate. Under the latter, is here enumerated "tenant by dower." But in Gaunt *vs.* Wainman, 3 Bing. N. C. 69, which was a writ of dower, where the tenant pleaded that the husband of demandant had no endowable estate in the premises, it was objected that he was estopped to set up that fact, by having accepted a deed from the husband's assignees, wherein the premises were described as *freehold*. But the court, on argument, TINDAL, Ch. J., held that the estoppel, not binding the wife, could not bind the grantee of the husband's estate. The learned judge quoted the above text from Co. Litt., and further, "And this is the reason that regularly a stranger shall neither take advantage nor be bound by the estoppel," and adds, "It would be hard if it were otherwise." The point seems to be here assumed, on all hands, that the deed of the husband is no estoppel upon the wife, even as to the husband's title.

2. This last case seems to us a full authority for the decision in the principal case. And the fact that the New York courts have adopted the same view, after enforcing the estoppel upon the grantee of the husband for many years, would seem to justify the expectation that this rule would ultimately prevail.

The doctrine of estoppels is based upon the policy of holding the party, to a deed, or judgment, bound by the admissions and implications growing out of the instrument, or act, and it is part of the policy of the law, not to carry the estoppel beyond the clear and natural import of the words; and it is never extended beyond the parties, and privies, in blood, and in estate. As the estate of dower is one derived from the husband, by a quasi inheritance, although the wife may be said to hold, as purchaser, and in her own right, yet her estate being dependent, not only upon that of the husband, but also upon the contingency of her surviving him, it seems to us there is more plausibility in holding the wife, as privy in estate with the husband, and so entitled to claim the benefit of, and bound to submit to, all estoppels binding upon him in regard tc the estate that we have seen intimated

in the case. And the earlier cases in New York, referred to in the principal case, and in some of the other states, seem to have gone upon this ground, without very clearly defining it. Wedge *vs.* Moore, 6 Cush. R. 8; May *vs.* Tillman, 1 Mich. R. 262; Thompson *vs.* Egbert, 2 N. J. 459. But a different view was taken in Crittenden *vs.* Woodruff, 6 Eng. (Ark.) R. 82. See also Hugley *vs.* Gregg, 4 Dana 68. The more recent cases in New York seem to admit of no question in regard to the conclusive authority of Sparrow *vs.* Kingman, 1 Comst. R. 242. See to this effect, Finn *vs.* Sleight, 8 Barb. R. 401. So that the estoppel seems there to have been abandoned.

It seems therefore an unsettled question, to some extent. And while we naturally feel, that the express decision of the English courts, and that of three of the American states, including New York, must give an impetus in that direction which it will be impossible to resist, we nevertheless cannot comprehend how there is any injustice, or violation of principle, in enforcing the estoppel, both against the wife, who succeeds to an estate in virtue of her husband's title, and which is carved out of that title, and also against the husband's grantee. If the question depended solely upon the application of fundamental principles, we might incline in this direction. But the tide of authority certainly seems to be setting, very strongly, in the opposite direction. And as no injustice is done, by narrowing the application of such estoppels as exclude the truth, the very class of which it has been so often, and so justly, perhaps, affirmed, that as they exclude the truth, they should not be favored, we would certainly not be understood, as having formed any very clear opinion that the estoppel could be made to apply, both to the wife and the grantee of the husband, without too great refinement upon the nature of an estate in dower. And unless the estoppel can be made mutual it surely cannot be held binding, without injustice, and an entire departure from the fundamental quality of the thing.

But it has seemed to us, upon a hasty view of the subject, that the fallacy, if any, consists, in admitting, that the estoppel in regard to the husband's title, does not bind the wife. The fact that the husband conveys a *leasehold* interest does not show that he does not claim to own, and the grantee does not admit, that he does, in fact, own, a *freehold* in the premises at the same time. That is often the case, no doubt, and may always be supposed to be, in the case of a leasehold conveyance, without conflict either with the deed, or its implications. It may well be said the conveyance of the lesser estate, unless there is some declaration to that effect, by no means implies that the husband did not, at the date of the deed, claim to have a larger estate. And this is the only class of cases in which it seems to have been admitted, that no estoppel exists against the wife showing that the husband had a larger estate.

But suppose the husband conveys his whole interest in the premises, and it appears by the deeds, under which he claims title, which thereby become part of the estoppel by deed, that the husband never purchased, and never claimed any larger estate, than a mere chattel interest, for a term of years, is not the wife bound by this estoppel? If not, there is certainly a very great uncertainty in regard to the application of estoppels by deed. Any purchaser under the husband would be so estopped in regard to all others, in the privity of blood or estate, and we see no good reason why the wife should not be, provided the bonâ fide character of the deed as to her is esta-

blished. She is regarded as a purchaser of the right of dower, because marriage is a valuable consideration. She therefore derives her title under the same title by which the husband holds, and in regard to the incidents of estoppel, we do not perceive that it would make any difference if the husband, by deed, should convey to any one, man or woman, an estate in all lands in which he had an inheritable interest, of which he was then seised, or might become thereafter seised, during his life. In making this supposition we lay out of the account the effect of the registry and the rights of creditors, and all questions of collusion between the husband and his grantee for the purpose of defeating such estate.

Supposing then the wife to have purchased, in form, as well as in fact, the contingent right of a life interest in all the husband's estates of inheritance, during his life, to begin only at his decease, and the husband to have conveyed an estate to some third party, as a leasehold estate, and in regard to which it appeared that he only purchased and received a conveyance of a leasehold interest, and claimed the same only under such conveyance. It would certainly be unjust and unreasonable to allow the wife to defeat the estate of the grantee of the husband, during her own life, by setting up a different estate in the husband from any ever purchased, or claimed by him, and from that conveyed by him, and bonâ fide purchased of him.

There is indeed one consideration in regard to holding the wife bound by estoppels, in the husband's deed, already alluded to, which should not escape notice; that is, where the husband conveys an estate of *inheritance* in fact, describing it as a life estate, or for years, for the mere purpose of defeating the wife's right of dower. This would seem a sufficient reason why estoppels created by the husband should not operate against the wife, unless it also appeared they were bonâ fide, on his part. So that to render the estoppel complete against the wife, it seems requisite that the title conveyed by the husband should correspond with that conveyed to him and claimed by him during his tenure, or in some other way that it was bonâ fide.

We must conclude therefore that any estoppels binding upon the husband, and which existed at the date of the marriage, or which were created subsequently, and at the time of their creation were against the interest of the husband, or in any other way shown to be bonâ fide, do bind the wife as a privy in estate, and to that extent, the grantees of the husband are estopped, in a suit for dower, to deny any fact appearing in their deed from the husband. At least such is our view of the true application of the doctrine of estoppel by deed to the subject in question, if the subject were *res integra*.

It is probable that the fact of the wife's estate dating from the marriage, and the husband having an incidental interest in defeating the contingent estate of the wife, may be sufficient ground to reject, as to the wife, all estoppels created by the husband, during the coverture, and which operate in favor of the husband and against the interest of the wife, if any such can be conceived, without implying collusion and fraud, which will defeat the deed itself, and, by consequence, any estoppel dependent upon it.

It will thus be perceived that the subject is one not free from embarrassment, whether we attempt to determine it upon the ground of principle or authority, and therefore we are by no means sure, the English case of Gaunt *vs.* Wainman, *supra*, and those which have followed in its wake, in setting aside all estoppels created through the intervention of the husband, after the date of the marriage, whether operating in his favor or against

his interest, or that of the wife, may not have pursued the wisest and fairest course. The more we reflect upon the subject, and the further we have examined and considered the rules of law, and the decisions of the court, upon the subject, the more fully we have become reconciled to this view. We can therefore adopt the views of Mr. Justice KENT, so satisfactorily presented, without any misgivings, notwithstanding any impression we might have, that the courts might in the first instance have adopted some middle course, more consistent with principle and analogy, if not as simple and easy of application. I. F. R.

## *In the Supreme Court of Michigan.*

JAMES A. RICE *vs.* JOHN RUDDIMAN.

The rule of riparian proprietorship upon the river Detroit, as laid down in *Lorman* vs. *Benson*, 8 Mich. 18, is applicable to Lake Muskegon; and the ownership of land bordering upon the lake, carries with it the ownership of the land under the water, so far out as it is susceptible of beneficial private use, but subordinate to the paramount public right of navigation, and the other public rights incident thereto.

Error to the Circuit Court for Muskegon County.

*Walker & Russell*, for plaintiff in error.

*G. F. N. Lothrop*, for defendant in error.

CHRISTIANCY, J.—The errors assigned, raise the question whether riparian ownership of lands along Muskegon Lake is to be governed by the law applicable to tide-waters, or substantially by the common law rule applicable to fresh-water streams above the ebb and flow of the tide.

The plaintiff below appears to have been the owner of fractional section eighteen, town ten north, range sixteen west, bounded according to the United States survey of the public lands, by the water line of the lake. The section was made fractional by the waters of the lake occupying a part of what would otherwise have fallen within its lines. He had executed a mortgage of this fractional section, which had been foreclosed in the United States Circuit Court for the district of Michigan.